WEST VIRGINIA CODE CHAPTER 48 ARTICLE 27

WV Legislature

PART 1. GENERAL PROVISIONS.

§48-27-101. Findings and purposes.

(a) The Legislature of this state finds that:

(1) Every person has a right to be safe and secure in his or her home and family and to be free from domestic violence.

(2) Children are often physically assaulted or witness violence against one of their parents or other family or household members, violence which too often ultimately results in death. These children may suffer deep and lasting emotional harm from victimization and from exposure to domestic violence;

(3) Domestic violence is a major health and law-enforcement problem in this state with enormous costs to the state in both dollars and human lives. It affects people of all racial and ethnic backgrounds and all socioeconomic classes; and

(4) Domestic violence can be deterred, prevented or reduced by legal intervention that treats this problem with the seriousness that it deserves.

(b) This article shall be liberally construed and applied to promote the following purposes:

(1) To assure victims of domestic violence the maximum protection from abuse that the law can provide;

(2) To create a speedy remedy to discourage violence against family or household members with whom the perpetrator of domestic violence has continuing contact;

(3) To expand the ability of law-enforcement officers to assist victims, to enforce the domestic violence law more effectively, and to prevent further abuse;

(4) To facilitate equal enforcement of criminal law by deterring and punishing violence against family and household members as diligently as violence committed against strangers;

(5) To recognize that domestic violence constitutes serious criminal behavior with potentially tragic results and that it will no longer be excused or tolerated; and

(6) To recognize that the existence of a former or on-going familial or other relationship should not serve to excuse, explain or mitigate acts of domestic violence which are otherwise punishable as crimes under the laws of this state.

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PART 2. DEFINITIONS.

§48-27-201. Applicability of definitions.

For the purposes of this article and article 26-101, et seq., of this chapter, the words or terms defined in this article, and any variation of those words or terms required by the context, have the meanings ascribed to them in this section. These definitions are applicable unless a different meaning clearly appears from the context.

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PART 2. DEFINITIONS.

§48-27-202. Domestic violence defined.

"Domestic violence" or "abuse" means the occurrence of one or more of the following acts between family or household members, as that term is defined in section two hundred four of this article:

(1) Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons;

(2) Placing another in reasonable apprehension of physical harm;

(3) Creating fear of physical harm by harassment, stalking, psychological abuse or threatening acts;

(4) Committing either sexual assault or sexual abuse as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code; and

(5) Holding, confining, detaining or abducting another person against that person's will.

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§48-27-203. Emergency hearing defined.

"Emergency hearing" means the hearing before a magistrate upon the filing of a petition for a protective order. An emergency hearing may be held ex parte.

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PART 2. DEFINITIONS.

§48-27-204. Family or household members defined.

"Family or household members" means persons who:

(1) Are or were married to each other;

(2) Are or were living together as spouses;

(3) Are or were sexual or intimate partners;

(4) Are or were dating: Provided, That a casual acquaintance or ordinary fraternization between persons in a business or social context does not establish a dating relationship;

(5) Are or were residing together in the same household;

(6) Have a child in common regardless of whether they have ever married or lived together;

(7) Have the following relationships to another person:

(A) Parent;

(B) Stepparent;

(C) Brother or sister;

(D) Half-brother or half-sister;

(E) Stepbrother or stepsister;

(F) Father-in-law or mother-in-law;

(G) Stepfather-in-law or stepmother-in-law;

(H) Child or stepchild;

(I) Daughter-in-law or son-in-law;

(J) Stepdaughter-in-law or stepson-in-law;

(K) Grandparent;

(L) Step grandparent;

(M) Aunt, aunt-in-law or step aunt;

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(N) Uncle, uncle-in-law or step uncle;

(O) Niece or nephew;

(P) First or second cousin; or

(8) Have the relationships set forth in paragraphs (A) through (P), subdivision (7) of this section to a family or household member, as defined in subdivisions (1) through (6) of this section.

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§48-27-205. Final hearing defined.

"Final hearing" means the hearing before a family court judge following the entry of an order by a magistrate as a result of the emergency hearing.

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§48-27-206. Law-enforcement agency defined.

(a) "Law-enforcement agency" means and is limited to:

(1) The state police and its members;

(2) A county sheriff and his or her law-enforcement deputies;

(3) A police department in any municipality as defined in section two, article one, chapter eight of this code; and

(4) Any federal agency whose purpose includes enforcement, maintenance and gathering of information of both criminal and civil records relating to domestic violence under federal law.

(b) The term "law-enforcement agency" includes, but is not limited to, the Department of Human Services in those instances of child abuse reported to the department that are not otherwise reported to any other law-enforcement agency.

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§48-27-207. Program for victims of domestic violence defined.

"Program for victims of domestic violence" means a licensed program for victims of domestic violence and their children, which program provides advocacy, shelter, crisis intervention, social services, treatment, counseling, education or training.

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§48-27-208. Program of intervention for perpetrators defined.

"Program of intervention for perpetrators" means a licensed program, where available, or if no licensed program is available, a program that:

(1) Accepts perpetrators of domestic violence into educational intervention groups or counseling pursuant to a court order; or

(2) Offers educational intervention groups to perpetrators of domestic violence.

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§48-27-209. Protective order and military protective order defined.

"Protective order" means an emergency protective order entered by a magistrate as a result of the emergency hearing or a protective order entered by a family court judge upon final hearing.

"Military protective order" means a protective order issued by a commanding officer in the United States Armed Forces, the West Virginia National Guard, or the National Guard of any other state against a person under such officer's command.

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Part III. Procedure.

§48-27-301. Jurisdiction.

(a) Circuit courts, family courts and magistrate courts have concurrent jurisdiction over domestic violence proceedings as provided in this article.

(b) The Supreme Court of Appeals is authorized to assign appropriate judicial officers for five domestic violence courts in any jurisdiction chosen by the Supreme Court of Appeals. Judicial officers so assigned have the authority and jurisdiction to preside over criminal misdemeanor crimes of domestic violence involving family or household members as defined in subdivisions (1) through (6), inclusive, and paragraphs (A), (B) and (H), subdivision (7), section two hundred four of this article, relating to offenses under subsections (b) and (c), section nine, article two, chapter sixty-one of this code, misdemeanor violations of section nine-a, article two, chapter sixty-one of this code, misdemeanor violations of section twenty-eight, article two, chapter sixty-one of this code, misdemeanor offenses under article three, chapter sixty-one of this code where the alleged perpetrator and the victim are said family or household members, subdivisions (7) and (8), section seven, article seven, chapter sixty-one of this code and civil and criminal domestic violence protective order proceedings as provided in this article. The judicial officer chosen for any domestic violence court may be a current or senior status circuit judge, family court judge, temporary family court judge or magistrate. The Supreme Court of Appeals is requested to maintain statistical data to determine the feasibility and effectiveness of any domestic violence court established by the provisions of this section.

(c) The assigned judicial officer in a domestic violence court does not have jurisdiction to preside over any felony crimes unless the assigned judicial officer is a circuit court judge.

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§48-27-302. Venue.

The action may be heard in the county in which the domestic violence occurred, in the county in which the respondent is living or in the county in which the petitioner is living, either temporarily or permanently. If the parties are married to each other, the action may also be brought in the county in which an action for divorce between the parties may be brought as provided by 5-106.

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§48-27-303. Effect of petitioner leaving residence.

The petitioner's right to relief under this article shall not be affected by his or her leaving a residence or household to avoid further abuse.

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PART 3. PROCEDURE.

§48-27-304. Commencement of proceeding.

(a) An action under this article is commenced by the filing of a verified petition in the magistrate court.

(b) No person shall be refused the right to file a petition under the provisions of this article. No person shall be denied relief under the provisions of this article if she or he presents facts sufficient under the provisions of this article for the relief sought.

(c) Husband and wife are competent witnesses in domestic violence proceedings and cannot refuse to testify on the grounds of the privileged nature of their communications.

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§48-27-305. Persons who may file petition.

A petition for a protective order may be filed by:

(1) A person seeking relief under this article for herself or himself

(2) An adult family or household member for the protection of the victim or for any family or household member who is a minor child or physically or mentally incapacitated to the extent that he or she cannot file on his or her own behalf, or

(3) A person who reported or was a witness to domestic violence and who, as a result, has been abused, threatened, harassed or who has been the subject of other actions intended to intimidate the person.

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§48-27-306. Counterclaim or affirmative defenses.

(a) A respondent named in a petition alleging domestic violence may file a verified counterclaim stating any claim that the respondent has against the petitioner that would be a basis for filing a petition under this article.

(b) In response to a petition or counterclaim, the person alleged to have committed the domestic violence may assert any affirmative defense that he or she may have available.

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§48-27-307. Persons accompanying petitioner.

No person accompanying a person who is seeking to file a petition under the provisions of this article is precluded from being present if his or her presence is desired by the person seeking a petition unless the person's behavior is disruptive to the proceeding.

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§48-27-308. Charges for fees and costs postponed.

No fees shall be charged for the filing of petitions or other papers, service of petitions or orders, copies of orders, or other costs for services provided by, or associated with, any proceedings under this article until the matter is brought before the court for final resolution.

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§48-27-309. Priority of petitions.

Any petition filed under the provisions of this article shall be given priority over any other civil action before the court, except actions in which trial is in progress, and shall be docketed immediately upon filing.

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§48-27-310. Full faith and credit.

Any protective order issued pursuant to this article shall be effective throughout the state in every county. Any protection order issued by any other state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States or any Indian tribe or band that has jurisdiction to issue protection orders shall be accorded full faith and credit and enforced in accordance with the provisions of article twenty-eight of this chapter.

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§48-27-311. Service of process.

A protective order may be served:

(1) On the respondent by means of a Class I legal advertisement published notice, with the publication area being the most current known county in which the respondent resides, published in accordance with the provisions of section two, article three, chapter fifty-nine of this code if personal service by law enforcement has been unsuccessful. Simultaneously with the publication, the respondent shall be served with the protective order and the order of publication by first class mail to the respondent's most current known residential address.

(2) Against nonresident persons by the manner prescribed in section thirty-three-a, article three, chapter fifty-six of this code.

Any protective order issued by the court of this state which is served in compliance with the provisions of Rule 4(f) of the West Virginia Rules of Civil Procedure served outside the boundaries of this state shall carry the same force and effect as if it had been personally served within this state's boundaries.

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PART 3. PROCEDURE.

§48-27-312. Production of documents pursuant to a subpoena duces tecum.

Notwithstanding any provision of law or any procedural rule to the contrary, any record in a proceeding filed pursuant to this article shall be supplied to any person presenting a subpoena duces tecum issued by a state or federal court in any criminal action or action filed pursuant to this article. Any record in a proceeding filed pursuant to this article is not subject to disclosure pursuant to a subpoena if the subpoena was issued in a civil action. In civil proceedings a court, for good cause shown, may enter an order permitting a person who is not otherwise permitted access to a court file to examine and copy records of a proceeding filed pursuant to this article: Provided, That the court shall enter such order as may be necessary to protect any document containing the address or other contact information of a person who filed a petition under this article: Provided, however, That any records obtained pursuant to the provisions of this section shall be used only in the context of the case in which the subpoena was issued and not for any other purpose.

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§48-27-401. Interaction between domestic proceedings.

(a) During the pendency of a divorce action, a person may file for and be granted relief provided by this article until an order other than a procedural order is entered in the divorce action pursuant to Part 5-501, et seq.

(b) If a person who has been granted relief under this article should subsequently become a party to an action for divorce, separate maintenance or annulment, such person shall remain entitled to the relief provided under this article including the right to file for and obtain any further relief, so long as no temporary order other than a procedural order has been entered in the action for divorce, annulment and separate maintenance, pursuant to Part 5-501, et seq.

(c) Except as provided in section 5-509 of this chapter and section 27-402 of this article for a petition and a temporary emergency protective order, no person who is a party to a pending action for divorce, separate maintenance or annulment in which an order other than a procedural order has been entered pursuant to Part 5-501, et seq. of this chapter, shall be entitled to file for or obtain relief against another party to that action under this article until after the entry of a final order which grants or dismisses the action for divorce, annulment or separate maintenance.

(d) Notwithstanding the provisions set forth in section 27-505, when an action seeking a divorce, an annulment or separate maintenance, the allocation of custodial responsibility or a habeas corpus action to establish custody, the establishment of paternity, the establishment or enforcement of child support, or other relief under the provisions of this chapter is filed or is reopened by petition, motion or otherwise, then any order issued pursuant to this article which is in effect on the day the action is filed or reopened shall remain in full force and effect by operation of this statute until: (1) A temporary order other than a procedural order or a final order is entered pursuant to the provisions of Part 5-501, et seq. or Part 6-601 et seq., of this chapter; or (2) an order is entered modifying such order issued pursuant to this article; or (3) the entry of a final order granting or dismissing the action. The Supreme Court of Appeals shall provide by rule for notice of the extension of the Domestic Violence Order to be provided to the parties, law enforcement and the domestic violence registry by the clerk of the court, or clerks of the courts, in which the action or actions are filed.

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§48-27-402. Proceedings in magistrate court when temporary divorce, annulment, separate maintenance or custody order is in effect.

(a) The provisions of this section apply where a temporary order has been entered by a family court in an action for divorce, annulment, separate maintenance or custody, notwithstanding the provisions of subsection 27-401(c) of this article.

(b) A person who is a party to an action for divorce, annulment, separate maintenance or custody in which a temporary order has been entered pursuant to section 5-501 of this chapter may petition the magistrate court for a temporary emergency protective order pursuant to this section for any violation of the provisions of this article occurring after the date of entry of the temporary order pursuant to section 5-501 of this chapter.

(c) The only relief that a magistrate may award pursuant to this section is a temporary emergency protective order:

(1) Directing the respondent to refrain from abusing the petitioner or minor children, or both;

(2) Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or household members or family members for the purpose of violating the protective order; and

(3) Ordering the respondent to refrain from contacting, telephoning, communicating with, harassing or verbally abusing the petitioner.

(d) A temporary emergency protective order may modify an award of custody or visitation only upon a showing, by clear and convincing evidence, of the respondent's abuse of a child, as abuse is defined in section 27-202 of this article. An order of modification shall clearly state which party has custody and describe why custody or visitation arrangements were modified.

(e) (1) The magistrate shall forthwith transmit a copy of any temporary emergency protective order, together with a copy of the petition, by mail or by facsimile machine to the family court in which the action is pending and to law-enforcement agencies. The family court shall set a hearing on the matter to be held no later than ten days following the entry of the order by magistrate. The family court shall give notice of the hearing date, time and place to the parties and shall advise them of their opportunity to appear and participate in a hearing to determine whether the order entered by the magistrate should be extended by the family court to a date certain or should be vacated. The notice shall also provide that a party's failure to appear may result in the entry of an order extending the order entered by the magistrate to a date certain or vacating the order of the magistrate. Subsequent to the hearing, the family court shall forthwith enter an order and cause the same to be served on the parties and transmitted by mail or by facsimile machine to the issuing magistrate. The magistrate court clerk shall forward a copy of the family court order to law-enforcement

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agencies.

(2) If no temporary order has been entered in the pending action for divorce, annulment, separate maintenance or custody, the family court shall forthwith return the order with such explanation to the issuing magistrate. The magistrate who issued the order shall vacate the order, noting thereon the reason for termination. The magistrate court clerk shall transmit a copy of the vacated order to the parties and law-enforcement agencies.

(f) Notwithstanding any other provision of this code, if the family court extends the temporary emergency protective order entered by the magistrate or if, pursuant to the provisions of section 5-509, the family court enters a protective order as temporary relief in an action for divorce, the family court order shall be treated and enforced as a protective order issued under the provisions of this article.

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§48-27-403. Emergency protective orders of court; hearings; persons present.

(a)(1) Upon the filing of a verified petition under this article, the magistrate court may enter an emergency protective order as it may determine necessary to protect the petitioner or minor children from domestic violence and, upon good cause shown, may do so ex parte without the necessity of bond being given by the petitioner. Clear and convincing evidence of immediate and present danger of abuse to the petitioner or minor children constitutes good cause for the issuance of an emergency protective order pursuant to this section. For purposes of this section, the court may treat a military protective order as clear and convincing evidence of immediate and present danger of abuse to the petitioner or his or her minor children if the military protective order:

(A) Is still in effect and has not been terminated; and

(B) Was issued against the respondent because the petitioner was a reported victim of domestic abuse by the respondent.

(2) If the respondent is not present at the proceeding, the petitioner or the petitioner's legal representative shall certify to the court, in writing, the efforts which have been made to give notice to the respondent or just cause why notice should not be required. Copies of medical reports or records may be admitted into evidence to the same extent as though the original reports or records. The custodian of the records is not required to be present to authenticate the records for any proceeding held pursuant to this subsection. If the magistrate court determines to enter an emergency protective order, the order shall prohibit the respondent from possessing firearms.

(b) Following the proceeding, the magistrate court shall order a copy of the petition to be served immediately upon the respondent, together with a copy of any emergency protective order entered pursuant to the proceedings, a notice of the final hearing before the family court, and a statement of the right of the respondent to appear and participate in the final hearing, as provided in subsection (d) of this section. Copies of any order entered under the provisions of this section, a notice of the final hearing before the family court, and a statement of the right of the petitioner to appear and participate in the final hearing, as provided in subsection (d) of this section, shall also be delivered to the petitioner. Copies of any order entered shall also be delivered to any law-enforcement agency having jurisdiction to enforce the order, including municipal police, the county sheriff's office and local office of the State Police, within 24 hours of the entry of the order. An emergency protective order is effective until modified by order of the family court upon hearing as provided in subsection (d) of this section. The order is in full force and effect in every county in this state.

(c) Subsequent to the entry of the emergency protective order, service on the respondent, and the delivery to the petitioner and law-enforcement officers, the court file shall be transferred to the office of the clerk of the circuit court for use by the family court.

(d) The family court shall schedule a final hearing on each petition in which an emergency

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protective order has been entered by a magistrate. The hearing shall be scheduled not later than 10 days following the entry of the order by the magistrate. The notice of the final hearing shall be served on the respondent and delivered to the petitioner, as provided in subsection (b) of this section, and must set forth the hearing date, time, and place and include a statement of the right of the parties to appear and participate in the final hearing. The notice must also provide that the petitioner's failure to appear will result in a dismissal of the petition and that the respondent's failure to appear may result in the entry of a protective order against him or her for a period of 90 or 180 days, as determined by the court. The notice must also include the name, mailing address, physical location, and telephone number of the family court having jurisdiction over the proceedings. To facilitate the preparation of the notice of final hearing required by the provisions of this subsection, the family court must provide the magistrate court with a day and time in which final hearings may be scheduled before the family court within the time required by law.

(e) Upon final hearing the petitioner must prove, by a preponderance of the evidence, the allegation of domestic violence or that he or she reported or witnessed domestic violence against another and has, as a result, been abused, threatened, harassed, or has been the subject of other actions to attempt to intimidate him or her, or the petition shall be dismissed by the family court. If the respondent has not been served with notice of the emergency protective order, the hearing may be continued to permit service to be effected. The failure to obtain service upon the respondent does not constitute a basis to dismiss the petition. Copies of medical reports may be admitted into evidence to the same extent as though the original thereof, upon proper authentication, by the custodian of the records.

(f) A person requested by a party to be present during a hearing held under the provisions of this article shall not be precluded from being present unless that person is to be a witness in the proceeding and a motion for sequestration has been made and the motion has been granted. A person found by the court to be disruptive may be precluded from being present.

(g) Upon hearing, the family court may dismiss the petition or enter a protective order for a period of 90 days or, in the discretion of the court, for a period of 180 days. The hearing may be continued on motion of the respondent, at the convenience of the court. Otherwise, the hearing may be continued by the court no more than seven days. If a hearing is continued, the family court may modify the emergency protective order as it considers necessary.

(h) Notwithstanding any other provision of this code to the contrary, a petition filed pursuant to this section that results in the issuance of an emergency protective order naming a juvenile as the respondent in which the petition for the emergency protective order is filed by or on behalf of the juvenile's parent, guardian or custodian, or other person with whom the juvenile resides shall be treated as a petition authorized by §49-4-704 of this code, alleging the juvenile is a juvenile delinquent: *Provided*, That the magistrate court shall notify the prosecuting attorney in the county where the emergency protective order is issued within 24 hours of the issuance of the emergency protective order and the prosecuting attorney may file an amended verified petition to comply with the provisions of §49-4-704(a) of this code within two judicial days.

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PART 5. PROTECTIVE ORDERS; VISITATION ORDERS.

§48-27-501. Issuance of protective order; modification of order.

(a) Upon final hearing, the court shall enter a protective order if it finds, after hearing the evidence, that the petitioner has proved the allegations of domestic violence by a preponderance of the evidence. If the respondent is present at the hearing and elects not to contest the allegations of domestic violence or does not contest the relief sought, the petitioner is not required to produce evidence and prove the allegations of domestic violence and the court may directly address the issues of the relief requested.

(b) The court may modify the terms of a protective order at any time upon subsequent petition filed by any party.

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§48-27-502. Mandatory provisions in protective order.

(a) A protective order must order the respondent to refrain from abusing, harassing, stalking, threatening or otherwise intimidating the petitioner or the minor children, or engaging in other conduct that would place the petitioner or the minor children in reasonable fear of bodily injury.

(b) The protective order must prohibit the respondent from possessing any firearm or ammunition.

(c) The protective order must inform the respondent that he or she is prohibited from possessing any firearm or ammunition and that possession of a firearm or ammunition while subject to the court's protective order is a criminal offense under state and federal law, notwithstanding the fact that the respondent might otherwise have a right to possess a firearm.

(d) The protective order must inform the respondent that the order is in full force in every county of this state.

(e) The protective order must contain on its face the following statement, printed in bold-faced type or in capital letters:

"VIOLATION OF THIS ORDER MAY BE PUNISHED BY CONFINEMENT IN A REGIONAL JAIL FOR AS LONG AS ONE YEAR AND BY A FINE OF AS MUCH AS $2,000".

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§48-27-503. Permissive provisions in protective order.

The terms of a protective order may include:

(1) Granting possession to the petitioner of the residence or household jointly resided in at the time the abuse occurred;

(2) Ordering the respondent to refrain from entering or being present in the immediate environs of the residence of the petitioner;

(3) Awarding temporary custody of or establishing temporary visitation rights with regard to minor children named in the order;

(4) Establishing terms of temporary visitation with regard to the minor children named in the order including, but not limited to, requiring third party supervision of visitations if necessary to protect the petitioner and/or the minor children;

(5) Ordering the noncustodial parent to pay to the caretaker parent a sum for temporary support and maintenance of the petitioner and children, if any;

(6) Ordering the respondent to pay to the petitioner a sum for temporary support and maintenance of the petitioner, where appropriate;

(7) Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or household or family members for the purpose of violating the protective order;

(8) Ordering the respondent to participate in an intervention program for perpetrators;

(9) Ordering the respondent to refrain from contacting, telephoning, communicating, harassing or verbally abusing the petitioner;

(10) Providing for either party to obtain personal property or other items from a location, including granting temporary possession of motor vehicles owned by either or both of the parties, and providing for the safety of the parties while this occurs, including ordering a law-enforcement officer to accompany one or both of the parties;

(11) Ordering the respondent to reimburse the petitioner or other person for any expenses incurred as a result of the domestic violence, including, but not limited to, medical expenses, transportation and shelter;

(12) Ordering the petitioner and respondent to refrain from transferring, conveying, alienating, encumbering or otherwise dealing with property which could otherwise be subject to the jurisdiction of the court or another court in an action for divorce or support, partition or in any other action affecting their interests in property;

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(13) Awarding the petitioner the exclusive care, possession, or control of any animal owned, possessed, leased, kept or held by either the petitioner or the respondent or a minor child residing in the residence or household of either the petitioner or the respondent and prohibiting the respondent from taking, concealing, molesting, physically injuring, killing or otherwise disposing of the animal and limiting or precluding contact by the respondent with the animal; and

(14) Ordering any other relief the court deems necessary to protect the physical safety of petitioner or those persons for whom a petition may be filed as provided in subdivision (2), section three hundred five of this article.

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§48-27-504. Provisions in protective order for person witnessing or reporting domestic violence.

When the person to be protected is a person who reported or was a witness to the domestic violence, the terms of a protective order may order:

(1) The respondent to refrain from abusing, contacting, telephoning, communicating, harassing, verbally abusing or otherwise intimidating the person to be protected;

(2) The respondent to refrain from entering the school, business or place of employment of the person to be protected for the purpose of violating the protective order; and

(3) The respondent to refrain from entering or being present in the immediate environs of the residence of the petitioner.

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§48-27-505. Time period a protective order is in effect; extension of order; notice of order or extension.

(a) Except as otherwise provided in subsection (d), section four hundred one of this article, a protective order, entered by the family court pursuant to this article, is effective for either ninety days or one hundred eighty days, in the discretion of the court. Upon receipt of a written request for renewal from the petitioner prior to the expiration of the original order, the family court shall extend its order for an additional ninety-day period.

(b) Notwithstanding the provisions of subsection (a), the court may enter a protective order for a period of one year if the court finds by a preponderance of the evidence, after a hearing that any of the following aggravating factors are present:

(1) That there has been a material violation of a previously entered protective order;

(2) That two or more protective orders have been entered against the respondent within the previous five years;

(3) That respondent has one or more prior convictions for domestic battery or assault or a felony crime of violence where the victim was a family or household member;

(4) That the respondent has committed a violation of the provisions of section nine-a, article two, chapter sixty-one of this code against a person protected by an existing order of protection; or

(5) That the totality of the circumstances presented to the court require a one year period in order to protect the physical safety of the petitioner or those persons for whom a petition may be filed as provided in subdivision (2), section three hundred five of this article.

(c) The court may extend a protective order entered pursuant to subsection (b) of this section for whatever period the court considers necessary to protect the physical safety of the petitioner or those persons for whom a petition may be filed as provided in subdivision (2), section three hundred five of this article, if the court finds by a preponderance of evidence, after a hearing of which respondent has been given notice, that:

(1) A material violation of the existing protective order has occurred; or

(2) Respondent has committed a material violation of a provision of a final order entered pursuant to subsection (c), section six hundred eight, article five of this chapter has occurred.

(d) To be effective, a written request to renew a ninety or one hundred eighty-day order must be submitted to the court prior to the expiration of the original order period. A notice of the extension shall be sent by the clerk of the court to the respondent by first-class mail, addressed to the last known address of the respondent as indicated by the court file. The extension of time is effective upon mailing of the notice.

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(e) Certified copies of any order entered or extension notice made under the provisions of this section shall be served upon the respondent by first class mail, addressed to the last known address of the respondent as indicated by the court file, and delivered to the petitioner and any law-enforcement agency having jurisdiction to enforce the order, including the city police, the county sheriff's office or local office of the West Virginia State Police within twenty-four hours of the entry of the order. The protective order shall be in full force and effect in every county of this state.

(f) The family court may modify the terms of a protective order upon motion of either party.

(g) The clerk of the circuit court shall cause a copy of any protective order entered by the family court pursuant to the provisions of this article or pursuant to the provisions of chapter forty-eight of this code to be forwarded to the magistrate or magistrate court clerk and the magistrate or magistrate court clerk shall forward a copy of the protective order to the appropriate state and federal agencies for registration of domestic violence offenders as required by state and federal law.

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§48-27-506. Effect of protective order on real and personal property.

No order entered pursuant to this article may in any manner affect title to any real property, except as provided in section 14-301 for past due child support. The personal property of any person ordered to pay child support pursuant to the provisions of this article is subject to a lien for past due child support as provided in part 14-201, et seq.

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§48-27-507. Mutual protective orders prohibited.

Mutual protective orders are prohibited unless both parties have filed a petition under part three of this article and have proven the allegations of domestic violence by a preponderance of the evidence. This shall not prevent other persons, including the respondent, from filing a separate petition. The court may consolidate two or more petitions if he or she determines that consolidation will further the interest of justice and judicial economy. The court shall enter a separate order for each petition filed: Provided, That nothing in this section shall preclude the court from entering an order restricting contact pursuant to section two-a, article two-a, chapter fifty-one of this code.

WV Legislature

§48-27-508. Costs to be paid to family court fund.

Any person against whom a protective order is issued shall be assessed costs of $25. Such costs shall be paid to the family court fund established pursuant to section twenty-two, article two-a, chapter fifty-one of this code.

WV Legislature

§48-27-509. Conditions of visitation in cases involving domestic violence.

(a) A court may award visitation of a child by a parent who has committed domestic violence only if the court finds that adequate provision for the safety of the child and the petitioner can be made.

(b) In a visitation order, a court may:

(1) Order an exchange of a child to occur in a protected setting;

(2) Order that supervision be provided by another person or agency;

(3) Order the perpetrator of domestic violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators as a condition of the visitation;

(4) Order the perpetrator of domestic violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for the twelve hours that precede the visitation;

(5) Order the perpetrator of domestic violence to pay the costs of supervised visitation, if any;

(6) Prohibit overnight visitation;

(7) Impose any other condition that the court considers necessary to provide for the safety of the child, the petitioner or any other family or household member.

(c) Regardless of whether visitation is allowed, the court may order that the address of the child and the petitioner be kept confidential.

(d) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation.

WV Legislature

§48-27-510. Appeals.

(a) A petitioner who has been denied an emergency protective order may file a petition for appeal of the denial, within five days of the denial, to the family court.

(b) Any party who alleges that he or she will be adversely affected or aggrieved by a final protective order, or the denial or dismissal of a petition for a protective order, may file a petition for appeal with the circuit court within ten days of the entry of the order by the family court. The order shall remain in effect pending an appeal unless stayed by order of the family court sua sponte or upon motion of a party, or by order of the circuit court upon motion of a party. No bond shall be required for any appeal under this section.

(c) A petition for appeal filed pursuant to this section shall be heard by the court within ten days from the filing of the petition.

(d) The standard of review of findings of fact made by the family court is clearly erroneous and the standard of review of application of the law to the facts is an abuse of discretion standard.

WV Legislature

§48-27-511. Purging of domestic violence files.

Two years after the entry of a final protective order, the circuit court, may, upon motion, order that the protective order and references to the order be purged from the file maintained by any law-enforcement agency and may further order that the file maintained by the court be sealed and not opened except upon order of the court when such is in the interest of justice.

WV Legislature

PART 6. DISPOSITION OF DOMESTIC VIOLENCE ORDERS.

§48-27-601. Transmitting orders to domestic violence database; affidavit as to award of possession of real property; service of order on respondent.

(a) Upon entry of an order pursuant to section 27-403 or part 27-501, et seq., or an order entered pursuant to part 5-501, et seq., granting relief provided for by this article, a copy of the order shall be immediately transmitted electronically by the court or the clerk of the court to the domestic violence database established pursuant to the provisions of section twenty-one, article one, chapter fifty-one of this code. No later than the close of the next business day the court or the clerk of the court shall transmit the order to a local office of the municipal police, the county sheriff and the West Virginia State Police for service upon the respondent named in the order. The law-enforcement agency or agencies to which a copy of the order is supplied are not required to maintain a copy of the order after the respondent is served.

(b) A sworn affidavit may be executed by a party who has been awarded exclusive possession of the residence or household, pursuant to an order entered pursuant to section 27-503, and shall be delivered to law-enforcement agencies simultaneously with any order giving the party's consent for a law-enforcement officer to enter the residence or household, without a warrant, to enforce the protective order or temporary order.

(c) Orders shall be promptly served upon the respondent. Failure to serve a protective order on the respondent does not stay the effect of a valid order if the respondent has actual notice of the existence and contents of the order.

(d) Any law-enforcement agency in this state in possession of or with notice of the existence of an order issued pursuant to the provisions of sections 27-403 or 27-501 of this article or the provisions of section 5-509 of this chapter which is in effect or has been expired for thirty days or less that receives a report that a person protected by an order has been reported to be missing shall immediately follow its procedures for investigating missing persons. No agency or department policy delaying the beginning of an investigation has any force or effect.

(e) The provisions of subsection (d) of this section shall be applied where a report of a missing person is made which is accompanied by a sworn affidavit that the person alleged to be missing was, at the time of his or her alleged disappearance, being subjected to treatment which meets the definition of domestic battery or assault set forth in section twenty-eight, article two, chapter sixty-one of this code.

WV Legislature

§48-27-701. Service of pleadings and orders by law-enforcement officers.

Notwithstanding any other provision of this code to the contrary, all law-enforcement officers are hereby authorized to serve all pleadings and orders filed or entered pursuant to this article on Sundays and legal holidays. No law-enforcement officer shall refuse to serve any pleadings or orders entered pursuant to this article. Law enforcement shall attempt to serve all protective orders without delay: Provided, That service of process shall be attempted within seventy-two hours of law enforcement's receipt of the order to every address provided by petitioner. Any law-enforcement agency that serves pleadings or orders pursuant to this section may receive the fee authorized therefor by Rule 4 of the Rules of Practice and Procedure for Domestic Violence Civil Proceedings. If service is not made, law enforcement shall continue to attempt service on the respondent until proper service is made.

WV Legislature

§48-27-702. Law-enforcement officers to provide information, transportation and to report suspicions of animal cruelty.

(a) Any law-enforcement officer responding to an alleged incident of domestic violence shall inform the parties of the availability of the possible remedies provided by this article and the possible applicability of the criminal laws of this state. Any law-enforcement officer investigating an alleged incident of domestic violence shall advise the victim of such violence of the availability of the family protection shelter to which such person may be admitted.

(b) If there is reasonable cause to believe that a person is a victim of domestic violence or is likely to be a victim of domestic violence, a law-enforcement officer responding to an alleged incident of domestic violence shall, in addition to providing the information required in subsection (a) of this section, provide transportation for or facilitate transportation of the victim, upon the request of such victim, to a shelter or an appropriate court.

(c) Whenever a law-enforcement officer, pursuant to a response to an alleged incident of domestic violence, forms a reasonable suspicion that an animal is a victim of cruel or inhumane treatment, he or she shall report the suspicion and the grounds therefor to the county humane officer within twenty-four hours of the response to the alleged incident of domestic violence.

WV Legislature

PART 8. RECORD-KEEPING BY LAW-ENFORCEMENT OFFICERS.

§48-27-801. Reports of domestic violence to state police.

(a) Each law-enforcement agency shall maintain records on all incidents of domestic violence reported to it and shall monthly make and deliver to the West Virginia state police a report on a form prescribed by the State Police, listing all such incidents of domestic violence. Such reports shall include:

(1) The age and sex of the victim and the perpetrator of domestic violence;

(2) The relationship between the parties;

(3) The type and extent of abuse;

(4) The number and type of weapons involved;

(5) Whether the law-enforcement agency responded to the complaint and if so, the time involved, the action taken and the time lapse between the agency's action and the victim's request for assistance;

(6) Whether any prior reports have been made, received or filed regarding domestic violence on any prior occasion and if so, the number of such prior reports; and

(7) The effective dates and terms of any protective order issued prior to or following the incident to protect the victim: Provided, That no information which will permit the identification of the parties involved in any incident of domestic violence shall be included in such report.

(b) The West Virginia state police shall tabulate and analyze any statistical data derived from the reports made by law-enforcement agencies pursuant to this section and publish a statistical compilation in its annual uniform crime report, as provided for in section twenty-four, article two, chapter fifteen of this code. The statistical compilation shall include, but is not limited to, the following:

(1) The number of domestic violence complaints received;

(2) The number of complaints investigated;

(3) The number of complaints received from alleged victims of each sex;

(4) The average time lapse in responding to such complaints;

(5) The number of complaints received from alleged victims who have filed such complaints

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on prior occasions;

(6) The number of aggravated assaults and homicides resulting from such repeat incidents;

(7) The type of police action taken in disposition of the cases; and

(8) The number of alleged violations of protective orders.

WV Legislature

§48-27-802. Maintenance of registry by State Police.

(a) The West Virginia State Police shall maintain a registry in which it shall enter certified copies of protective orders entered by courts from every county in this state pursuant to the provisions of this article and of protection orders issued by a jurisdiction outside of this state pursuant to its law: Provided, That the provisions of this subsection are not effective until a central automated state law-enforcement information system is developed.

(b) Effective January 2, 2010, a court which enters a protective order pursuant to this article shall immediately register such order in the domestic violence database established pursuant to the provisions of section twenty-one, article one, chapter fifty-one of this code. A protected individual who obtains a protection order from a jurisdiction outside of this state pursuant to its law or his or her representative as provided in section five, article twenty-eight of this chapter may register that order with the West Virginia Supreme Court of Appeals for entry in the domestic violence database established pursuant to the provisions of section twenty-one, article one, chapter fifty-one of this code.

(c) Failure to register an order as provided in this section shall not affect its enforceability in any county or jurisdiction.

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§48-27-803.

Repealed.

Acts, 2010 Reg. Sess., Ch. 52.

WV Legislature

PART 9. SANCTIONS.

§48-27-901. Civil contempt; violation of protective orders; order to show cause.

(a) Any party to a protective order or a legal guardian or guardian ad litem may file a petition for civil contempt alleging a violation of an order issued pursuant to the provisions of this article. The petition shall be filed in the family court, if a family court entered an order or in the circuit court, if a circuit court entered the order, in the county in which the violation occurred or the county in which the order was issued.

(b) When a petition for an order to show cause is filed, a hearing on the petition shall be held within five days from the filing of the petition. Any order to show cause which is issued shall be served upon the alleged violator.

(c) Upon a finding of contempt, the court may order the violator to comply with specific provisions of the protective order and post a bond as surety for faithful compliance with the order. The bond may not be a personal recognizance bond and shall be in an amount that does not exceed the ability of the violator to post. The bond may not be waived by a fee waiver pursuant to the provisions of section one, article two, chapter fifty-nine of this code.

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§48-27-902. Violations of protective orders; criminal complaints.

(a) Any person authorized to file a petition pursuant to section three hundred five of this article, and any person authorized to file a petition for civil contempt pursuant to section nine hundred one of this article may file a criminal complaint:

(1) Against a respondent who knowingly and willfully violates a provision of an emergency or final protective order entered pursuant to:

(A) subsection (a) or (b) of section five hundred two of this article;

(B) if the court has ordered such relief; subsection (2), (7) or (9) of section five hundred three of this article;

(C) subsection (b) or (c) of section five hundred nine, article five of this chapter; or

(D) subsection (b) or (c) of section six hundred eight, article five of this chapter;.

(2) Against a person who violates a condition of bail, probation or parole which has the express intent or effect of protecting the personal safety of a particular person or persons;

(3) Against a respondent who knowingly and willfully violates the terms of a protection order from another jurisdiction that is required to be enforced pursuant to section three, article twenty-eight of this chapter; or

(4) Against a person who, in violation of subdivision (3), subsection (a), section seven, article twenty-eight of this chapter, knowingly and willfully violates the terms of a condition of bail, probation or parole imposed in another state which has the express intent or effect of protecting the personal safety of a particular person or persons.

(b) If the court finds probable cause upon the complaint, the court shall issue a warrant for the arrest of the person charged.

WV Legislature

§48-27-903. Misdemeanor offenses for violation of protective order; repeat offenses; penalties.

(a) A person is guilty of a misdemeanor if the person knowingly and willfully violates:

(1) A provision of an emergency or final protective order entered pursuant to:

(A) Subsection (a) or (b), section five hundred two of this article;

(B) If the court has ordered such relief; subsection (2), (7), (9) or (14), section five hundred three of this article;

(C) Subsection (b) or (c), section five hundred nine, article five of this chapter; or

(D) Subsection (b) or (c), section six hundred eight, article five of this chapter;

(2) A condition of bail, probation or parole which has the express intent or effect of protecting the personal safety of a particular person or persons; or

(3) A restraining order entered pursuant to section nine-a, article two, chapter sixty-one of this code.

Upon conviction thereof the person shall be confined in jail for a period of not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than $250 nor more than $2,000.

(b) Any person who is convicted of a second offense under subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than three months nor more than one year, which jail term shall include actual confinement of not less than thirty days, and fined not less than $500 nor more than $3,000.

(c) A respondent who is convicted of a third or subsequent offense under subsection (a) of this section when the violation occurs within ten years of a prior conviction of this offense is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than six months nor more than one year, which jail term shall include actual confinement of not less than six months, and fined not less than $500 nor more than $4,000.

WV Legislature

§48-27-1001. Arrest for violations of protective orders.

(a) When a law-enforcement officer observes any respondent abuse the petitioner or minor children or the respondent's physical presence at any location in knowing and willful violation of the terms of an emergency or final protective order issued under the provisions of this article or section 5-509 or 5-608 of this chapter granting the relief pursuant to the provisions of this article, in knowing and willful violation of the terms of a protection order from another jurisdiction that is required to be enforced pursuant to section four, article twenty-eight of this chapter, he or she shall immediately arrest the respondent.

(b) When a family or household member is alleged to have committed a violation of the provisions of section 27-903 or 28-7, a law-enforcement officer may arrest the perpetrator for said offense where:

(1) The law-enforcement officer has observed credible corroborative evidence, as defined in subsection 27-1002(b), that the offense has occurred; and

(2) The law-enforcement officer has received, from the victim or a witness, a verbal or written allegation of the facts constituting a violation of section 27-903; or

(3) The law-enforcement officer has observed credible evidence that the accused committed the offense.

(c) Any person who observes a violation of a protective order as described in this section, or the victim of such abuse or unlawful presence, may call a local law-enforcement agency, which shall verify the existence of a current order, and shall direct a law-enforcement officer to promptly investigate the alleged violation.

(d) Where there is an arrest, the officer shall take the arrested person before a circuit court or a magistrate and, upon a finding of probable cause to believe a violation of an order as set forth in this section has occurred, the court or magistrate shall set a time and place for a hearing in accordance with the West Virginia rules of criminal procedure.

WV Legislature

§48-27-1002. Arrest in domestic violence matters; conditions.

(a) Notwithstanding any provision of this code to the contrary, if a person is alleged to have committed a violation of the provisions of subsection (a) or (b), section twenty-eight, article two, chapter sixty-one of this code against a family or household member, in addition to any other authority to arrest granted by this code, a law-enforcement officer has authority to arrest that person without first obtaining a warrant if:

(1) The law-enforcement officer has observed credible corroborative evidence that an offense has occurred; and either:

(2) The law-enforcement officer has received, from the victim or a witness, an oral or written allegation of facts constituting a violation of section twenty-eight, article two, chapter sixty-one of this code; or

(3) The law-enforcement officer has observed credible evidence that the accused committed the offense.

(b) For purposes of this section, credible corroborative evidence means evidence that is worthy of belief and corresponds to the allegations of one or more elements of the offense and may include, but is not limited to, the following:

(1) Condition of the alleged victim. -– One or more contusions, scratches, cuts, abrasions, or swellings; missing hair; torn clothing or clothing in disarray consistent with a struggle; observable difficulty in breathing or breathlessness consistent with the effects of choking or a body blow; observable difficulty in movement consistent with the effects of a body blow or other unlawful physical contact.

(2) Condition of the accused. -- Physical injury or other conditions similar to those set out for the condition of the victim which are consistent with the alleged offense or alleged acts of self-defense by the victim.

(3) Condition of the scene. -- Damaged premises or furnishings; disarray or misplaced objects consistent with the effects of a struggle.

(4) Other conditions. -- Statements by the accused admitting one or more elements of the offense; threats made by the accused in the presence of an officer; audible evidence of a disturbance heard by the dispatcher or other agent receiving the request for police assistance; written statements by witnesses.

(c) Whenever any person is arrested pursuant to subsection (a) of this section, the arrested person shall be taken before a magistrate within the county in which the offense charged is alleged to have been committed in a manner consistent with the provisions of Rule 1 of the Administrative Rules for the Magistrate Courts of West Virginia.

(d) If an arrest for a violation of subsection (c), section twenty-eight, article two, chapter

WV Legislature

sixty-one of this code is authorized pursuant to this section, that fact constitutes prima facie evidence that the accused constitutes a threat or danger to the victim or other family or household members for the purpose of setting conditions of bail pursuant to section seventeen-c, article one-c, chapter sixty-two of this code.

(e) Whenever any person is arrested pursuant to the provisions of this article or for a violation of an order issued pursuant to section five hundred nine or subsections (b) and (c), of section six hundred eight, article five of this chapter the arresting officer, subject to the requirements of the Constitutions of this state and of the United States:

(1) Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of domestic violence;

(2) May seize a weapon that is in plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons; and

(3) May seize all weapons that are possessed in violation of a valid protective order.

WV Legislature

§48-27-1003. Nonjudicial enforcement of order.

(a) A law-enforcement officer of this state, upon determining that there is probable cause to believe that a valid protective order exists and that the order has been violated, shall enforce the order pursuant to any authority to arrest under the code. Presentation of a protective order that identifies both the protected individual and the respondent and that appears, on its face, to be authentic and currently in effect constitutes probable cause to believe that a valid protective order exists. For the purposes of this section, the protective order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protective order is not required for enforcement.

(b) If a protective order is not presented, a law-enforcement officer of this state may consider other credible information in determining whether there is probable cause to believe that a valid protective order exists.

(c) If a law-enforcement officer of this state determines that an otherwise valid protective order cannot be enforced because the respondent has not been notified of or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

WV Legislature

§48-27-1004. Immunity.

This state or a local governmental agency, or a law-enforcement officer, prosecuting attorney, clerk of court or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the enforcement of a protective order or the detention or arrest of an alleged violator of a protective order if the act or omission was done in good faith in an effort to comply with this article.

WV Legislature

§48-27-1101. Rules of practice and procedure; forms to be provided; operative date.

(a) Pleadings, practice and procedure in domestic violence matters before the court are governed by the rules of practice and procedure for domestic violence civil proceedings promulgated by the West Virginia Supreme Court of Appeals.

(b) The West Virginia Supreme Court of Appeals shall prescribe forms which are necessary and convenient for proceedings pursuant to this article and the court shall distribute such forms to the clerk of the circuit court, the secretary-clerk of the family court and the clerk of magistrate court of each county within the state.

WV Legislature

§48-27-1102. Authorization for the promulgation of legislative rules.

The Governor's committee on crime, delinquency and correction shall develop and promulgate rules for state, county and municipal law-enforcement officers, law-enforcement agencies and communications and emergency operations centers which dispatch law-enforcement officers with regard to domestic violence: Provided, That such rules and procedures must be consistent with the priority criteria prescribed by generally applicable department procedures. Prior to the publication of proposed rules, the Governor's committee on crime, delinquency and correction shall convene a meeting or meetings of an advisory committee to assist in the development of the rules. The advisory committee shall be composed of persons invited by the committee to represent state, county and local law-enforcement agencies and officers, to represent magistrates and court officials, to represent victims of domestic violence, to represent shelters receiving funding pursuant to article 26-101, et seq. of this chapter, to represent communications and emergency operations centers that dispatch law-enforcement officers and to represent other persons or organizations who, in the discretion of the committee, have an interest in the rules. The rules and the revisions thereof as provided in this section shall be promulgated as legislative rules in accordance with chapter twenty-nine-a of this code. The committee shall meet at least annually to review the rules and to propose revisions as a result of changes in law or policy.

WV Legislature

§48-27-1103. Training of law-enforcement officers in domestic violence.

All law-enforcement officers shall receive training relating to response to calls involving domestic violence.

WV Legislature

§48-27-1104. Judicial education on domestic violence.

All circuit court judges may and magistrates and family courts shall receive a minimum of three hours training each year on domestic violence which shall include training on the psychology of domestic violence, the battered wife and child syndromes, sexual abuse, courtroom treatment of victims, offenders and witnesses, available sanctions and treatment standards for offenders, and available shelter and support services for victims. The Supreme Court of Appeals may provide such training in conjunction with other judicial education programs offered by the supreme court.

WV Legislature

§48-27-1105. Rule for time-keeping requirements.

The Supreme Court of Appeals shall promulgate a procedural rule to establish time-keeping requirements for magistrates, magistrate court clerks and magistrate assistants so as to assure the maximum funding of incentive payments, grants and other funding sources available to the state for the processing of cases filed for the establishment of temporary orders of child support pursuant to the provisions of this article.

WV Legislature